

at the time entry summary documents are filed by the importer is considered to be past due. If CBP does not collect an assessment from an importer, the importer shall be responsible for paying the assessment and any late charges to the Secretary in the form of a negotiable instrument made payable to "USDA." The payment shall be mailed to a location designated by the Secretary or sent in an electronic form approved by the Secretary.

(b) *Penalties.* Any person who willfully violates any provision of this subpart shall be assessed a civil penalty by the Secretary of not more than the amount specified in § 3.91(b)(1)(xx) of this title for each such violation and, in the case of a willful failure to pay, collect, or remit the assessment as required by this subpart, in addition to the amount due, a penalty equal to the amount of the assessment on the quantity of milk as to which the failure applies. The amount of any such penalty shall accrue to the United States and may be recovered in a civil suit brought by the United States. The remedies provided in this section shall be in addition to, and not exclusive of, other remedies that may be available by law or in equity.

[49 FR 11816, Mar. 28, 1984, as amended at 70 FR 29579, May 24, 2005; 76 FR 14791, Mar. 18, 2011]

#### § 1150.157 Assessment exemption.

(a) A producer described in § 1150.152(a)(1) and (a)(2) who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (h) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for exemption under this section, a producer pursuant to § 1150.152 (a)(1) and (a)(2) shall submit a request for exemption to the Board on a form provided by the Board at any time initially and annually thereafter on or before July 1 as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following: the pro-

ducer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified in paragraph (a) of this section for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If a producer described in § 1150.152(a)(1) and (a)(2) complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer described in paragraph (c) of this section shall provide a copy of the Certificate of Exemption to each person responsible for remitting assessments to the Board on behalf of the producer pursuant to § 1150.152(a).

(f) The person responsible for remitting assessments to the Board pursuant to § 1150.152(a) shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board pursuant to § 1150.172(a).

(g) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic dairy products—on a form provided by the Board—at any time initially and annually thereafter as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the

importer. The Board will issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation.

(h) The exemption will apply not later than the last day of the month following the Certificate of Exemption issuance date.

(i) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

(j) Importers who are exempt from assessment in paragraph (g) of this section shall be eligible for reimbursement of assessments collected by the CBP and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

[76 FR 14792, Mar. 18, 2011]

EFFECTIVE DATE NOTE: At 80 FR 82021, Dec. 31, 2015, §1150.157 was amended by removing paragraph (i), redesignating paragraph (j) as paragraph (i), and revising paragraphs (a), (b), (c), (d), (e), (g), and newly redesignated paragraph (i), effective Feb. 29, 2016. For the convenience of the user, the revised text is set forth as follows:

**§ 1150.157 Assessment exemption.**

(a) A producer described in §1150.152(a)(1) and (2) who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of the producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, a producer subject to assessments pursuant to §1150.152(a)(1) and (2) shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS-15) at any time during the year initially, and annually thereafter on or before July 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant’s full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid organic certificate issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same time-frame.

(e) A producer approved for exemption under this section shall provide a copy of the Certificate of Exemption to each person responsible for remitting assessments to the

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Board on behalf of the producer pursuant to § 1150.152(a).

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(g) An importer who imports products that are eligible to be labeled as “organic” or “100 percent organic” under the NOP, or certified as “organic” or “100 percent organic” under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified “organic” or “100 percent organic” dairy products on an *Organic Exemption Request Form* (Form AMS-15) at any time initially, and annually thereafter on or before July 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer an alphanumeric number valid for 1 year from the date of issue. This alphanumeric number should be entered by the importer on the CBP entry documentation. Any line item entry of “organic” or “100 percent organic” dairy products bearing this alphanumeric number assigned by the Board will not be subject to assessments. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

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(i) An importer who is exempt from payment of assessments under paragraph (g) of this section shall be eligible for reimbursement of assessments collected by the CBP on certified “organic” or “100 percent organic” dairy products and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

### PROMOTION, RESEARCH AND NUTRITION EDUCATION

#### § 1150.161 Promotion, research and nutrition education.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any plans or projects authorized in §§ 1150.139, 1150.140 and this section.

Such plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans or projects for promotion, research and nutrition education with respect to milk and dairy products; and

(2) The establishment and conduct of research and studies with respect to the sale, distribution, marketing and utilization of milk and dairy products and the creation of new products thereof, to the end that marketing and utilization of milk and dairy products may be encouraged, expanded, improved or made more acceptable. Included shall be research and studies of proposals intended to increase the use of fluid milk and dairy products by the military and by persons in developing nations and proposals intended to demonstrate the feasibility of converting nonfat dry milk to casein for domestic and export use.

(b) Each plan or project authorized under § 1150.161(a) shall be periodically reviewed or evaluated by the Board to insure that the plan or project contributes to an effective program of promotion, research and nutrition education. If it is found by the Board that any such plan or project does not further the purposes of the Act, the Board shall terminate such plan or project.

(c) No plan or project authorized under § 1150.161(a) shall make use of unfair or deceptive acts or practices with respect to the quality, value or use of any competing product.

### REPORTS, BOOKS AND RECORDS

#### § 1150.171 Reports.

(a) Each producer marketing milk of that producer's own production directly to consumers and each person making payment to producers and responsible for the collection of the assessment under § 1150.152(a) shall be required to report at the time for remitting assessments to the Board such information as may be required by the Board or by the Secretary. Such information may include but not be limited to the following:

(1) The quantity of milk purchased, initially transferred or which, in any